

**ATTORNEY INSTRUCTIONS RE: RENT AND PRE-PETITION
RESIDENTIAL JUDGMENTS (SEC. 311) PARTS I & II**

**Exception to Automatic Stay Applying to Eviction of Similar
Proceeding in Which the Lessor has Obtained Judgment for
Possession Prior to Date of Filing**

1. Effective Date, Deadlines and Rules

- a. For all petitions filed on or after October 17, 2005
- b. At time of filing, debtor must deposit any rent that would become due during the 30-day period after the filing of the bankruptcy petition with the court, w/prompt transmittal to landlord.
- c. Certificate of Intent to Cure Default & Rent Deposit (Certificate #1) due at time of filing.
- d. Certification of Cure of Entire Residential Judgment (Certificate #2) due 30 days after filing of petition.
- e. A hearing on objections to either Certification must be held within 10 days of the filing and service of the objection to determine veracity of the certification(s).
- f. Pertinent Rules: LBR 4001-4 - Requires that a copy of Judgment for possession be attached to the Certificate of Intent to Cure Entire Monetary Default. If Certificate or Judgment does not include name/address/phone number of lessor, a separate statement including that information must be filed.

Note: Court will issue a Notice of Deficiency re Intent to Cure if: 1. Debtor Fails to File Certificate of Intent to Cure; 2. Judgment is not attached to the Certificate of Intent to Cure; 3. If separate statement listing Lessor's Name, Address & Phone No. Is not attached to Certificate (if applicable); or 4. If Debtor Fails to Deposit 30 day rent with the Court.

Deficiency Notice will advise the Debtor that a certified copy of the court docket evidencing absence or defect of the required Certificate of Intent to Cure Entire Monetary Default will be immediately served upon the lessor.

2. Attorney Procedures At Time of Filing of Petition

a. Complete appropriate check boxes at bottom of page two of Voluntary Petition.

b. File Certification by Debtor of Intent to Cure Entire Monetary Default for Residential Property and Deposit of 30 Day Post Petition Rent into Court Registry (Certificate #1):

1. Prompts for the dollar amount of rent deposit
2. Sets a 30 day **Property Judgment** deadline from the file date of the petition (deadline to cure the default)
3. Sets a **FUNDS** flag (indicating funds deposited with Court)
4. Debtor's must pay rent deposit with cash or money order; attorneys may use check or credit card.
 - a. If petition is e-filed, rent must be brought to the Court and deposited with the Court that day (check or credit card payment).

Within 30 days of filing of petition, debtor must:

a. File: Certificate of Cure of Entire Residential Judgment (Certificate #2):

1. Satisfies 30 day Property Judgment deadline to cure default

3. Objection by Lessor/Landlord

a. If the lessor files an objection to either Certificate, the court must hold a hearing within 10 days of the filing and service of the objection, to determine the veracity of the Certificates.

b. If the court upholds the lessor's objection, the clerk will serve a certified copy of the court order on the lessor and the debtor (no fee imposed).

4. Debtor's Failure to File Certificate(s); Defective Certificates

a. If the debtor fails to file either required certification, or the Certificate is defective, the court shall serve on the lessor and the debtor a certified copy of the docket, indicating the absence/defect of the required certification.

b. No certification fee is imposed.

5. Release of Funds

- a. Either the Debtor or Lessor may file a Motion to Release Funds
- b. Funds will be released upon Court order.

II. Eviction Actions Involving Endangerment of Property or Illegal Use of Controlled Substances Occurring Within 30 Days Before the Bankruptcy Filing

1. Effective Date, Deadlines and Rules

- a. For all petitions filed on or after October 17, 2005
- b. Landlord may File Protection of Property from Damage Certification at any time.
- b. Debtor's objection to Certification due 15 days after filing
- c. A hearing on Debtor's Objection must be held within 10 days of the filing and service of the objection to determine if situation giving rise to the lessor's certification existed or has been remedied.

2. Attorney Procedures

- a. Lessor must file a Protection of Property from Damage Certification with the court (and serve debtor) outlining facts that give rise to this exception

3. Debtor's Objection

- a. If Debtor files an objection, a hearing must be held within ten days
 - 1. If Court sustains debtor's objection, stay will remain in effect until termination of the stay under this section
 - 2. If Court overrules debtor's objection, relief from stay will not be required to enable the lessor to proceed with the eviction. Clerk of Court will serve the lessor and debtor a certified *copy of the order*

upholding the lessor's certification (no certification fee imposed).

b. If Debtor fails to object to lessor's Certificate, the Clerk of Court shall serve a certified copy of the docket indicating such failure on the lessor and debtor (no certification fee imposed).

4. New Events

- a. **Certificate #1** - Intent to Cure Default - Certification by Debtor of Intent to Cure Entire Monetary Default for Residential Property and Deposit of 30 Day Post Petition Rent *into Court Registry* - creates 30 day deadline to cure default. (Other)
- b. **Certificate #2** - Cure of Entire Residential Judgment Certificate - satisfies 30 day deadline to cure default. (Other)
- c. **Certificate #3** - Protection of Property from Damage - creates 15 day objection deadline
- d. Certified Copy of Docket Report - satisfies 30 day deadline to cure default (Court Event)
- e. Notice of Deficiency re Intent to Cure (Court Event)
- f. Motion to Release Funds from Court Registry

5. New Forms

- a. Notice of Deficiency re Intent to Cure
- b. There are no official forms for any of the three Certificates.

6. New Deadlines

- a. 30 day 'propjudg' deadline - set by Intent to Cure Default: Deadline to Cure Default

Revised 10/11/05